IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.31 of 2003

Mrs.Chandrakala B. Jain
through her P.A.
Bhavarlal Poonamchand Jain ...Appellant

V/s

Pune Municipal Corporation .. Respondent

Smt.Anita Agarwal for Appellant
Mr.V.G.Mujumdar for Respondent

CORAM:S.R.SATHE,J.

DATED:30th June 2005

P.C.:-

1. At the request of both the learned Advocates heard finally at admission stage.

2. The Appellant original plaintiff in Regular Civil Suit No.2174 of 1990 has filed this appeal against the judgment and order passed by the Court of Additional District Judge, Pune in Civil Appeal No.381 of 1997 whereby plaintiff's appeal was dismissed and order passed by the trial Court dismissing the plaintiff's suit for declaration and permanent and mandatory

injunction against Pune Municipal Corporation was confirmed.

3. Brief facts giving rise to this second appeal are as under :-

. House property bearing CTS No.816,Ravivar Peth, Pune was initially owned by one Sudha Modak. As she wanted to carry out construction in the said property she got sanctioned the building plan in the year 1986. The said building plan was renewed in the year 1988 and 1989. On 2-5-1989 Appellant plaintiff purchased the said property. As per initial sanctioned plan, new construction was to be started after demolishing the old structure in the suit property. It was decided to carry out the construction in two phases by demolishing old structure. There were tenants in the old building. Many of them had handed over possession but one of them namely Chandrkant Patil whose wife was an employee of defendant Municipal Corporation was not ready to vacate the tenament. According to the plaintiff, the said tenant with the help of some other persons tried to harass the plaintiff and created obstruction in the construction work. On 25-5-1990 the defendant Municipal Corporation issued notice under Section 267 of Bombay Provincial Municipal Corporation Act, 1949 to the plaintiff and asked her to stop the construction work as period of 4 years had lapsed from initial permission, plinth checking certificate was not obtained, old

construction was not demolished as agreed and old drainage line was disconnected.

4. According to the plaintiff the said notice was illegal and Corporation had no right to issue such notice particularly when initial permission was renewed on 14-12-1989 and period of one year from the said renewal had not lapsed. The plaintiff, therefore, filed the above mentioned suit against the defendant and also submitted an application for interim injunction. The trial Court was pleased to grant interim injunction restraining defendant Corporation from obstructing plaintiff’s construction work.

5. The defendant Corporation filed its written statement exh.16 and admitted that initial building plan was sanctioned on 4-3-1986 but contended that plaintiff had not demolished structure before starting new construction. Besides this, the renewal dated 23-9-1988 was not obtained within one year from the earlier sanction so also the renewal dated 14-2-1989 was also not obtained within one year from earlier renewal and as such the said renewals are not legal. The defendant also contended that the plaintiff damaged the old drainage pipe line and as a result of the same water accumulated in the property thereby causing nuisance to other tenants and public at large. Besides this, plaintiff did not obtain the plinth checking certificate. The defendant also contended that it was

necessary for the plaintiff to obtain fresh permission as the period of 4 years had lapsed from initial sanction of the plan. Hence on all these grounds the defendant prayed for dismissal of the suit.

6. On the above pleadings the learned trial Judge framed issues at Exh.20 and after considering the evidence adduced by both the parties came to the conclusion that the renewals were not obtained by the plaintiff or her predecessor within stipulated period and as such the renewals were wrong. Besides, period of 4 years had lapsed from initial sanction of a plan and plaintiff had also committed breach of not demolishing the old structure before starting new construction. Hence on all these grounds the trial Court held that notice issued by the defendant Corporation was legal and valid and plaintiff is not entitled to get declaration and injunction. Naturally, he dismissed the plaintiff's suit.

7. Being aggrieved by the above decision, the plaintiff filed first appeal in the Court of district Judge, Pune. The Additional District Judge, Pune after hearing both sides dismissed the appeal. It is this order that is being challenged by the present Appellant in this appeal.

8. Mrs. Anita Agarwal, learned Advocate for the Appellant plaintiff has urged only two points before me.

Firstly, she submitted that substantial question of law involved in this appeal is whether defendant Corporation had right to issue notice to stop work once they had granted renewal on 14-12-1989 and period of one year therefrom was not over. Secondly, she canvased before me that the learned trial Judge failed to consider the admission of the defendants witness Anant Polekar to the effect that work upto plinth level was already carried out by the plaintiff. She therefore, submitted that notice issued by the defendant Corporation was illegal and as such the appeal be allowed and the declaration and injunction as prayed by the plaintiff be granted. As against this Mr.Mujumdar, learned Advocate for the defendant Corporation supported the judgment and order passed by the first Appellate Court.

9. It is not in dispute that initially the property was owned by Sudha Modak and the same has been purchased by plaintiff on 2-5-1989. It is also clear from the record that even after purchase of the said property the plaintiff did not inform the Corporation about the said sale transaction. It is also an admitted fact that initially on 4-3-1986 permission for construction was granted by the Corporation on certain terms and conditions. Admittedly, the said permission was not renewed as required under Bombay Provincial Municipal Corporation Act, 1949 or under Section 48 of Maharashtra Regional Town Planning Act within one year from the date of initial sanction. However, it does appear that

permission was renewed on 23-9-1988 and thereafter on 14-12-1989. Admittedly, notice under Section 267 of Bombay Provincial Municipal Corporation Act was issued by the defendant Municipal Corporation to the plaintiff on 25-5-1990 whereby the defendant Corporation asked the plaintiff to stop the construction work. Mrs. Anita Agarwal, learned Advocate for the Appellant plaintiff strenuously argued before me that as renewal to the original permission was granted on 14-12-1989 and period of 1 year was not over on 25-5-1990 the Corporation had no right to stop the work. According to her once permission to carry on construction is granted or renewed then within a period of one year the Corporation cannot ask the concerned person to stop the work. However, if we carefully peruse the relevant provisions and more particularly section 254 of Bombay Provincial Municipal Corporation Act, Section 48 of Maharashtra Regional Town Planning Act, 1966, Standardised building bye laws and development Control Rules 7.2 to 74 and Section 267 of Bombay Provincial Municipal Corporation Act 1949 it is very that it is not the case that the Corporation has no power or authority to issue notice to stop the work if the permission granted for commencement of work is in existence. If the work commenced is not as per earlier plan or carried out by committing any breach of sanction order or commencement certificate then Corporation has got every right to stop the work. Besides, if the concerned party has not at all obtained the permission to commence the work or has not obtained

renewal of sanction for construction plan then obviously the Corporation can issue notice to stop work under Section 267 of Bombay Provincial Corporation Act 1949. So, in the instant case merely because the plaintiff got the earlier permission renewed on 14-12-1989 it cannot be said that action of the Corporation issuing notice under Section 267 was illegal.

10. The question as to whether in the instant case there was valid renewal or not is in fact a different aspect. Admittedly the initial permission was granted on 4-3-1986 and thereafter the renewal was sought on 23-9-1988. It would be necessary to see what Section 48 of Maharashtra Regional and Town Planning Act, 1966 says regarding renewal. It runs as under :-

> S.48. Lapse of permission - Every permission for development granted or deemed to be granted under section 45 or granted under section 47 shall remain in force for a period of one year from the date of receipt of such grant and thereafter it shall lapse;
>
> Provided that, the Planning authority may, on application made to it extend such period from year to year, but such extended period shall in no case exceed three years;
>
> Provided further, that, such lapse shall not

bar any subsequent application for fresh permission under this Act.

11. Thus from the above provisions it is very clear that it was in fact necessary to secure the renewal within the period of one year, but that has not been done. Of course, the fact remains that even then the Corporation had renewed the permission without raising any objection that application for renewal was not made within 1 year. Same thing has happened in respect of renewal that has been obtained on 14-12-1989. However, these 2 renewals do not improve the plaintiff's case at all.

12. The learned Advocate for the Appellant plaintiff has drawn my attention to a case Sadanand S. Varde and Ors.V/s State of Maharashtra and Ors. - **2001 Vol.102(2) Bom.L.R. 930** wherein the Division Bench of this Court has observed:

> a conjoint reading of Development Control Regulation Nos. 4(4), 4(5) and 6(4) suggests that if the work has already commenced within one year from the date of the development permission, then the commencement certificate has to be periodically reviewed from year to year and there is no total lapsing of the commencement permission leading to the requirement of an application for a fresh

development permission.

. The Development Control Regulations contemplate that if building plans are sanctioned at the first instance, they remain valid for the entire construction, but what is envisaged is that the commencement certificate which is issued is stages has to be renewed from time to time provided work has already commenced within one year".

. Firstly, it must be noted that it is nowhere mentioned in this authority that once the construction has commenced there is no necessity to get the permission renewed. On the contrary all that has been observed in this authority is that if building plans are sanctioned at the first instance, they remain valid for the entire construction, but what is envisaged is that the commencement certificate which is issued in stages has to be renewed from time to time provided work has already commenced within one year. It is pertinent to note that in the instant case the plaintiff has not at all adduced any specific evidence to show that the work in question commenced within one year from the date of sanctioning the plan. So, under such circumstances the Corporation called upon the plaintiff to stop the work by observing that period of 4 years has lapsed from necessary sanction.

13. From perusal of the commencement certificate granted on 14-12-1989 it is very clear that there was a condition in the said certificate that after the construction was carried out upto the stage of plinth the party would get the plinth checked from the Corporation and unless that is done no further work will be started. It would be worthwhile to see what D.C. Rule 7.4 says. It runs as follows :-

> 7.4 Checking of Plinth/Columns upto Plinth level - The owner shall give notice in prescribed form given in Appendix G to the Authority after the completion of work, upto plinth level with a view to enable the Authority to ensure that the work is carried out in accordance with the sanctioned plans. The Authority shall carry out inspection within seven days from the receipt of such notice and give them permission, for carrying out further construction work as per sanctioned plans in prescribed proforma given in appendeix H.

14. Similarly, it was also a contention that party would first demolish the old structure in the property and then only new construction will be started. If we peruse the notice which is issued by the Corporation under section 267 of Bombay Provincial Municipal Corporation Act we find that plaintiff was asked to stop

the work for 4 reasons, viz. i) period of 4 years had lapsed from initial permission; ii) Plinth level checking certificate was not obtained; iii) Old construction was not demolished, and iv) Old drainage line was broken without making any alternate arrangement.

. So, it is very clear that the plaintiff had committed breach of terms and conditions of the commencement certificate granted to her and was trying to carry out further constructions which was obviously unlawful. As a result of the same the Corporation was entitled to issue notice under section 267 of Bombay Provincial Municipal Corporations Act, which reads as under :

> 267. Powers of Commissioner to direct removal of person directing unlawful work:
>
> (1) If the Commissioner is satisfied that the erection of any building or the execution of any such work as is described in section 254 has been unlawfully commenced or is being unlawfully carried on upon any premises he may, by written notice, require the person, directing or carrying on such erection or execution to stop the same forthwith."

15. It is an admitted fact that plaintiff has not produced even a single document to show that the defendant Corporation was informed by plaintiff that

construction upto plinth has been completed and no application for plinth checking was made. Merely because it has come in the evidence defendants' supervisor that when he visited the property he found that work upto plinth was completed, we cannot jump to the conclusion that condition with regard to getting the plinth checked is complied by the plaintiff. One does not know why plaintiff was shy to make any application for plinth checking. Admittedly, old construction was also not demolished before starting new work. Thus it is very clear that the notice to stop work issued by the Corporation was legal and valid. There is absolutely nothing to indicate that findings recorded by the Courts below are perverse or against the material on record. The first Appellate Court has taken into consideration all relevant provisions and correctly held that the plaintiff is not entitled for declaration and injunction. There is no error of law in the finding recorded by the first appellate Court.

16. In this view of the matter there is no substance in the appeal. The appeal is dismissed in limine.

(S.R.SATHE,J.)